84-2021

Office-Supreme Court, U.S.
FILED
JUN 18 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MARTIN W. McGREEVY,

Petitioner,

vs.

THE DANNON COMPANY INC., BEATRICE FOODS COMPANY, JUAN E. METZGER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARTIN W. McGREEVY, *Pro se*
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38 pp

QUESTIONS PRESENTED

1. Whether the Second Circuit Court of Appeals ignored Lorillard v. Pons 434 U.S. 575 and other precedents of this Court by upholding the tight time limit that was unreasonable and unconstitutional in that it denied the Petitioner's rights to equal protection of the laws in that the Petitioner was not treated as others similarly situated and there was no rational basis for the discrimination.

2. Whether the Second Circuit Court of Appeals ignored Lorillard v Pons 434 U.S. and other precedents of this Court by upholding the denial of findings of explicit facts and the withholding of the verdict from the jury that was unreasonable and unconstitutional in that it denied Petitioner's rights to due process.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

MARTIN W. MC GREEVY,
Petitioner,
-against-

THE DANNON CO. INC.,
BEATRICE FOODS CO.
JUAN E. METZGER
Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner, Martin W. Mc Greevy, respectfully prays that a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered on March 25, 1985.

OPINION BELOW

The Court of Appeals entered its ordered decision denying a petition for a rehearing on March 25, 1985. A copy of the order is attached as Appendix A

JURISDICTION

The opinion and order of the Court of Appeals was entered on March 25, 1985 and this petition for certiorari was filed within ninety(90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3), and 42 U.S.C. Section 2000.

CONSTITUTIONAL PROVISIONS INVOLVED

Article V, of the Constitution of the United States provides:

Nor shall any person ...be deprived of life, liberty, or property, without due process of law...

Article VI, of the Constitution of the United States provides:

...right to speedy and public trial, by an impartial jury of the State...

Article XIV, Section 1, of the Constitution of the United States provides:

Citizenship-Due Process of Law-Equal Protection.-
No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

On January 14, 1985, a panel of the Second Circuit Court of Appeals affirmed the dismissal of the first and second cause of action. A timely petition for rehearing pursuant to Rule 35(d) and 40 of the Federal Rules of Appellate Procedure was filed February 12, 1985, and the petition was denied on March 25, 1985 by the Second Circuit.

REASONS FOR GRANTING THE WRIT

1. The facts of the Title VII complaint first cause of action, were never heard by either a jury or at a bench trial. I have been denied my rights of Due Process, and Equal Protection. (V,VI,XIV Amendment)
2. The Court has over-stepped the bounds of its duty in substituting its own view of the facts without actually hearing any evidence on the Title VII complaint.
3. I should have at least been able to explain the Title VII position situation at the bench trial, after being stifled on that issue during the jury trial.
4. I was not asking to guarantee a recovery, but just asking a "day in court" for the explicit facts of the religion complaint.
5. The Court's finding of fact are clearly erroneous, as there is no evidence to support them. By not making explicit findings of Title VII facts, any possibility of a non-erroneous conclusion was precluded.

6. The district courts tight time limit, has denied me the F.L.S.A. two year statute of limitations applicable to the A.D.E.A complaint-three if willful.

7. The district courts tight time limit is in conflict with the 9th Circuit formulation in Williams v Owens-Illinois 27 F.E.P.1273

With regard to such discrimination in promotion this Court(9th Circuit) has accept ed the following formulation.

(A) Challenge to systematic discrimination is always timely brought by a present employee, for the existence of the system deters the employee from seeking his full employment rights or threatens to adversely affect him in the future.

The trial court erred, however, in concluding that the continuing violations did not apply to discriminatory placements or denial of promotion. It should not have barred consideration of such events that may have occured prior to the limitation period.

The reason is that continuing system of discrimination operates against the employee and violates his or her rights up to a point in time that falls within the applicable limitations period. Such continuing violations are most likely to occur in matters of placement or promotions.

It has not been established whether a Title VII complaint is entitled to a jury trial or not. If I am not entitled to a jury trial, which I originally requested. I am entitled to have the explicit facts of the Title VII religion complaint heard. (5th and 14th Amendments)

We, of course, intimate no view as to whether a jury trial is available under Title VII as a matter of either statutory or constitutional right. Lorrillard v Pons 434 U.S. 583

Where the case is tried without a jury, the trial Judge is generally required to make explicit findings of fact in order to facilitate review of his decision by the Appellate Court. FRCP 52 a

The trial Judge could not make explicit findings of facts, with the information he had available to him regarding the Title VII (religion). The Plaintiff was prevented from correcting clearly erroneous facts during both the jury trial or at the so-called bench "trial".

Pg 3 L 14: The Court: ....as I told you, this is a procedure because of his AGE.

Pg 228 L 6 The Court: ...because I didnt want the Jury to know about the religion.

Everything regarding religion was suppressed at the jury trial, because the Judge would not permit it. Pg 32 L 21 Ques: Mr Mc Greevy, after Mr. Einhorn was hired, were you still in charge of payable functions? Ans: You are asking me the question. The only way I can answer it, the way the facts happened, but each time I try I am told to stifle myself.

Pg 141 L 19 The Court: Well, I don't understand that Mr. Mc Greevy claimed he should get the position of Grace DePietro.
Mr. Harding: No, your Honor.
The Court:"No. All right. I don't--- I dont see---Frankly, I don't see it too much relevent." The Judge does not see it as relevent and it was not, but he uses the Catholic name to decide the religion case. Pg 135 L 4 Q. Did you ever object to anybody that you should have received Mr.

Cornier's job? Mc Greevy Ans: No.
This job was also not relevent to the case, and the Judge also used this second Catholic name to decide the religion case.
De Pietro, and Cornier positions had nothing to do with either complaint, and they should never have been allowed in the evidence. None of the Catholic names used by Judge Bartels to reach his clearly erroneous decision, had any connection with the positions claimed in the Title VII religion complaint. Pg 223 L 10 The Court: I have noted that you have one,two,three, four Jewish gentlemen...five Catholics. Catholics Grace De Pietro, Eugene Cornier, and Jim Schilling had absolutely no relationship to either my religion complaint or my age complaint. Fahey and Cardillo were raised in my ADEA complaint only.
Dramis, Feidelman, Einhorn, Schiffman, and Kronstadt- all Jewish were part of my religious complaint that the OffMgr/Controller

or Assistant Controller always was filled by a Jew for the past 36 years. It was a position I was promised when I started at Dannon. Dannon used the Catholic names as a pretext in the religious issue, and it worked in confusing the Court. At no time before, during or after the trial, was I allowed to correct these clearly erroneous facts. Positions involved in Title VII

1945-72 Ms Jean Dramis-Office Mgr.
1972-79 Arnold Fiedelman-Off Mgr/Controller
1973-77 Fred Einhorn-Asst Controller
1979-83 Stan Kronstadt-Controller
1981-83 Marc Schiffman-Asst to Controller

I was hired to replace Ms. Jean Dramis, when she would retire. The five people listed above are Jewish. These are the positions in my Title VII complaint.

JURISDICTION

As and for the Second Cause of Action ADEA

The Jurisdiction of this Court is invoked pursuant to Sec 7 (b) of the Age Discrimination in Employment Act (ADEA) 29 U.S.C. §626 (b) and Section 16 (b) of the Fair Labor Standards Act 29 U.S.C. § 216 (b) and jurisdiction of this action is conferred on this court by Sec. 7 (b) of the ADEA (29 U.S.C. § 626 (b)).

Court to jury at opening of trial.

Pg 6 L 9 THE COURT: After I charge you, you will consider your verdict in the jury room. You will determine the facts from all the testimony you will hear, and any other evidence that is submitted. You are the sole and exclusive judges of the facts.

Pg 147 L 20 Mr. Harding: Your Honor, I believe that an issue of fact sufficient to go to the jury has been raised Pg 213 L 14 Mr Harding: That's question of fact they (jury) have to decide. It was up to

the Jury to make the decision whether in fact discrimination had been practised against the Plaintiff in this case. As the aggrieved party in this case the Plaintiff feels the facts as presented to the Jury at the trial was more than sufficient evidence that the Dannon Co. had in fact shown a willful & planned design to systematically discriminate against the Plaintiff over his long tenure of employment. No reasonable view of the evidence would show why the case could not be returned to the Jury for verdict. A preponderence of the evidence would find for the Plaintiff in this case. Long before the ADEA was enacted, courts had uniformly interpreted the FLSA to afford a right to jury trial. Respondent demanded a JURY TRIAL on all issues of fact.

Pursuant to §7 (b) of the Act 29 U.S.C. s 626 (b) violations of the ADEA generally are treated as violations of the FLSA .... rights created by the ADEA are to be"enforced in accordance with the powers, remedies and procedures" of specified sections of the FLSA

...authorize private civil action for"such legal and equitable relief"

Congress made plain its decision ... permitting "such equitable relief as may be appropriate...compelling employment, reinstatement or promotion ...liquidated damages where the violation of the ADEA is willful

We are therefore persuaded that Congress intended that in a private action under the ADEA a trial by jury would be available where sought by one of the parties.

Senator Javits made the only specific reference in the legislative history to a jury trial. He said "The whole test is somewhat like the test in an accident case- did the person use reasonable care. A jury will answer yes or no." Lorillard v Pons 434 U.S. 575

Pg 147 L 5 Mr. Carlin: The defendant would like to move for a directed verdict. The plaintiff is limited to complaining about Mr. Schiffman's job.

Why was I limited to Schiffman's job, when I was at the EEOC to file my ADEA complaint on Mar. 25, 1981 several weeks before Schiff man was hired in May 1981. The District Court tight time limit, has denied me the FLSA two year statute of limitations applicable to this ADEA complaint (3yr if willful) Lorillard v Pons 434 U S 575

I filed the ADEA complaint, because of the January 16, 1981 salary freeze. The complaint was filed within 180 days of the Jan. 16, salary freeze, that triggered the complaint. The complaint was timely filed, and stated the Fahey, and Cardillo positions I do not know what two positions the Court thought I had been referring to in my testimony, but I did file my complaint ADEA stating both Fahey and Cardillo positions. I believe it was improper motivation i.e. part of Stefan Gorkin's plan "to get them to leave", that kept me from getting either position. My ADEA complaint starts with Stefan Gorkins remark on Aug. 14, 1978, but I had to wait until the overt act (wage freeze on Jan 16, 1981) to have the basis for my complaint

I challenged Dannon's systematic policies of discrimination, in hope that the Courts would remedy the situation. The continuous discrimination has been going on over many, many years, and the trial court limits the complaint to someone hired around 30 days before the complaint was filed.

The Courts affixing their imprimatur to Dannons past and present discrimination, has allowed them to continue to deprive me of my full employment rights and adversely affected my future. For example, consider the seminar and on-job FM 80 (computer) training during 1984 of Dannon's "accountants with degrees", with me the <u>oldest</u> and ONLY "accountant with degree" excluded from the training program. This was in spite of the fact that one trainee in his mid-twenties, was taking over part of my accounts payable function. He resigned from Dannon in July 1984, to go to work with Stan Kronstadt. There was no bona fide occupat-

ional qualification reasonably necessary to the operation of Dannon to cause them to exclude only me from the training. If it was not due to AGE, then it was in retaliation for filing this complaint.

My ADEA complaint was filed on Stefan Gorkin's policy, and the lowering of wage rate (salary freeze) not on the hiring of Marc Schiffman. The wage freeze was within 180 days of complaint filing 6/17/81, as the freeze was on 1/16/81.

U.S. District Judge Bartels belief is that a company can do with you as they will, if for no other reason than "not liking the color of your tie". He is supposed to be enforcing Federal Employment Discrimination Laws, but he does not seem to be in agreement with their basic premise. If Stefan Gorkin's intention and the Company's policy on Aug. 14, 1978 was "to get them to leave", there was absolutely no possibility of my getting any of the positions that opened

after that date. None of the positions; all filled by people younger than plaintiff, Mc Greevy (i.e. Kronstadt, Fahey, Cardillo, and Schiffman), would ever have been offered to him. Dannon wanted to "get them to leave"---not to promote them. Segregating people by locking them in their present positions without any hope of advancement or salary increase, would only result in having them leave.

The court has now held that a prima facie case need not include proof that a person below 40 was hired; proof that the favored person (all of the above) was younger than plaintiff will suffice. Mc Corstin v U.S. Steel 621 F2d 749 (5th Circuit 1980)

I believed the Courts would enforce the violated A.D.E.A. and Title VII, but the opposite is true. I am currently on an unpaid leave of absence from Dannon, as a result of this complaint. Appendix D

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

Martin W. Mc Greevy, pro se
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APPENDIX

UNITED STATES COURT OF APPEALS for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the
25th day of March 1985

Present:
HON. THOMAS J. MESKILL
HON. AMALYA L. KEARSE
HON. RICHARD J. CARAMONE
Circuit Judges,

Martin W. Mc Greevy,
Plaintiff-Appellant
v No. 84-7625

The Dannon Co.,Inc., Beatrice Foods Co. and Juan Metzger
Defendants-Appellees

A petition for a rehearing having been filed herein by plaintiff-appellant, Martin W. Mc Greevy, pro-se,

Upon consideration therof, it is

Ordered that said petition be and it hereby is DENIED

/S/

Elaine B. Goldsmith,
Clerk

APPENDIX A

APPENDIX B

UNITED STATES COURT OF APPEALS for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the
14th day of January 1985

Present:
HON. THOMAS J. MESKILL
HON. AMALYA L. KEARSE
HON. RICHARD J. CARAMONE
Circuit Judges

MARTIN W. MC GREEVY,
Plaintiff-Appellant

v No. 84-7625

THE DANNON CO.INC.,BEATRICE FOODS CO. AND JUAN METZGER
Defendants-Appellees

This is an appeal from judgment of the United States District Court for the Eastern District of New York, Bartels, J., dismissing Martin W. Mc Greevy's claim pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. s2000e et seq. (1982), and directing a verdict for the defendant, The Dannon co.,Inc. after a two day trial on Mc Greevy claim pursuant to the Age Discrimination in

Employment Act, 29 U.S.Cs621 et seq.(1982).

This cause came on to be heard on the transcript of record from said district court and was argued by Appellant pro se and by cousel for the Appellees.

The judgment of the district court is AFFIRMED.

The district court's finding that McGreevy failed to present any evidence that he was denied Schiffman's position because he was Catholic was not clearly erroneous. Therefore the court properly concluded that Mc Greevy had failed to establish a prima facia case of religious discrimination under Title VII

Mc Greevy also failed to submit evidence from which a jury could find that age was a factor in denying him promotions or participation in training programs. Because Mc Greevy failed to meet his initial burden on his age discrimination claim, the district court properly granted the motion for a directed verdict.

We have considered all of appellant's arguments and they are without merit.

Thomas J. Meskill,U.S.C.J.

Amalya L. Kearse, U.S.C.J.

Richard J. Caramone U.S.C.J.

On Jan. 16, 1981 I was given a bonus, that I was told would be on a monthly basis. This bonus was in place of a weekly increase that I and all other non-union employees received on an annual or semi-annual basis in the past. I was informed that my salary would not be increased, because it was now above a range that the company had arbitrarily set for my position. The Dannon Co. has chosen to classify a few individuals into a group, that it considers do not qualify for any further increases in salary. All the individuals have a fairly long period of employment with Dannon. It only stands to reason, that as you stay with a company a long time you also advance in age.

Firstly, I feel Dannon is violating my rights under the Federal Age Discrimination in Employment Act. I do not think it should be allowed to economize, on the people who have worked the longest. Just because they aged in the process. I further believe I am

being deprived of opportunities for advancement, and my skills that I have acquired outside of Dannon are being allowed to deteriorate. If Dannon knew they were going to freeze the salary range for my position, then I should have been given the opportunity to take one of the new positions (Fahey & Cardillo) that were created during 1980. One of the position went to a friend of the CFO, because they had worked together at another firm. The employees(Fahey &Cardillo) in these two positions, are being paid a higher weekly salary after one year of employment than I am earning after 17 years. I feel that Dannon is trying every means it can, to lower my morale so I will be forced to quit. Dannon would like me to seek employment elsewhere, and another company is supposed to hire me. Dannon feels it has a right to refuse to advance me or help update my skills, in keeping up with computer advances.

Dannon's refusal of affirmative action to compensate for past and present discriminat ion tends to deprive me of employment opp-ortunity, of advancement, and higher wage rates within the company. This and past discrimination has adversely affected my status, as far as employment opportunities with another firm are concerned. I equate not receiving a salary increase and having my salary frozen as a reduction in wage rate. Dannon has not allowed my job skills to keep pace with advances in technology. This depriving me of latest training tends to limit my employment opportunities both within the company, and would adversely affect my status if I were to seek employ-ment with another firm. Dannon's present policies indicate a preference for, and limits its training and advancement to younger people. I see no bona fide reason, for Dannon to carry out these discrimin-atory policies.

I feel that Dannon has chosen over the years to demote rather than promote me. I feel that Dannon is trying to debase me in every way it can, to force me into leaving its employment. Dannon places a premium on computer operations, and I think I should have been trained for that at the time Fred Einhorn was being trained. I believe I should have the privilege of on-the-job training, which the company gives younger employees. I feel I am being discriminated because of my age. Dannon never advanced or promoted me, and now they are further penalizing me for their own discriminatory practices. I over-heard one of the policy makers on the phone one day. He was saying "People stay too long at Dannon, and he was going to work out some plans for a greater turn-over". I guess this is the plan they decided on for me.

I have been employed by The Dannon Co., since Nov. 9, 1964. At the time I was hired as an accountant, I was informed that Sidney Wilder (a C.P.A.) would soon be leaving Dannon. I was also told I would be replacing Ms. Jean Dramis, the Office Mgr. when she retired. I handled most of the office operations. As time passed I was told, that Sidney Wilder would probably be staying on indefinitely. I was also continually told during this time, that when Jean Dramis retired I would be taking her position as Office Manager. Arnold Fiedelman was brought in as a replacement for Jean Dramis. Fred Einhorn was hired to handle several jobs including the payroll. Arnold Fiedelman had the title of Controller and Fred Einhorn was Asst. Controller. Einhorn was supposed to assist with the payroll, and was trained for it. He did it for several months, but he was making so many mistakes he was taken off the job.

Assisting on payroll was one of his main functions, and he could not handle it. I had to do it for around 10 years, in addition to my other work. Over a period of many months Fred Einhorn was sent to IBM day school (in place of working) for training in operating the computer, and for programming it. As in all his past endeavors, Fred was in charge of the computer operation for around two weeks. It was decided he could not handle the computer job, as he could not handle previous assignments given to him. I complained to Juan Metzger because Einhorn was hired at $50.00 more per week than I was making and he also got the computer training. Juan told me I did not qualify for the job, and I told him neither did Einhorn but he was given the training. In the Accounts Payable operation, I was involved with all the Assets,expenses,etc. In all the years I have been at Dannon, all my accounting

work has been in balance. I was telling this to Stan Kronstadt, and he told me anyone can balance the accounts. If this were true, I would like to know why the Accounts Receivable that Arnold Fiedelman was overseeing could not be balanced. I was told I had to be a C.P.A. for taking the job that was held by Jean Dramis, Arnold Fiedelman, & Fred Einhorn. Jean Dramis told me, that she had never taken a bookkeeping or accounting course. The other two were not C.P.A.'s, but all three were Jewish. I feel Dannon made a qualification for the jobs, that the party getting them had to be Jewish. As a Roman Catholic, I feel this fact violates my religious rights under Title VII of the Civil Rights Act of 1964. After the Accounts Receivable could not be balanced, and many months of auditing Arnold was replaced as Controller by Stan Kronstadt. On June 12, 1979 I was talking to Jim

Schilling, who was working as Dannon's CFO. I asked him if he would advise me to look for another job, as the Company's policy seemed to be "If you are not a Jew you wouldn't do." After yet another Jew Stan Kronstadt was hired, to fill the job. I explained all the foregoing facts to him, and he told me there would be more positions coming up in the accounting department that I would be considered to fill. One of these was filled by Cardillo and one by Fahey, after I was told by Jim Schilling not to leave that I would get either one or the other. I told Jim Schilling I could have handled Fiedelman's job as well as he did, and Jim said I could have probably done it better. On June 13, 1979 I was having a talk with Stan Kronstadt, and he wanted to fill me in on his background. He was upset about my remark to Schilling the day before "not a Jew you wont do"

He told me how he had "paid his dues", and how he qualified for his position. He told me how he went to school at nite, etc.and his job history. At the time He listed so many job changes, that I told him he sounded like a "floater" to me. He also told me "that I was older than he is", and if I am going to have to look for a job " I am going to be in competition with young & articulate people". I assume this means I am old & inarticulate.

APPENDIX C

Joe Ulicny
The Dannon Co. Inc.
22-11 38th Ave.
L.I.City, N.Y. 11101

In your Apr.11, 1985 letter you told me you were advised, that the appeal of my lawsuit against Dannon has been finally determined.

I was advised on Apr. 19, 1985 by the Clerk's Office U.S. Court of Appeals, that I can still petition the U.S.Supreme Court for a writ of certiorari.

As I intend to exhaust all my legal remedies, I still fear a return to Dannon at this time would only cause a retrogression in my condition.

If the Company is upheld in the final determination, I doubt I will return to Dannon. I could never work for a Company, that has such biased policies against its long-term employees. In my case, Stephan Gorkin, will have achieved what he set out to do. "Get them to leave".

In view of the bad feelings engendered by the suit, I still believe a return to work at Dannon would not be feasible at this time.

Yours truly,

Martin Mc Greevy

Apr. 22, 1985

APPENDIX D

APPENDIX E

Page 149 L 1 MR HARDING: The evidence of intent with respect to this particular plaintiff, your Honor, he did not get Schiffman's job. He did not get Fahey's job, or Cardillo's job. That's on the question of even if these jobs did not fall within the statutory period, the jury may consider, there is evidence of the fact that a statement was made by an officer of the corporation, or at least an individual and responsible position in the corporation, that he would attempt to create a turnover by freezing people's salary for a period of time, locking people in a certain period of time, and hoping they will quit.

THE COURT: That's not based on age; was it?

MR HARDING: Well, your Honor, I think the jury can infer on that, that it's based on age. We are talking about a lack of turnover, and we wouldn't raise their salary in hopes that they leave.

THE COURT: Did they say in hopes that they will leave?

MR HARDING: That was the testimony.

THE COURT: Okay. He needs more turnover, I think he said.

MR. HARDING: He also said, we will not give them any increases, and we would hope that they leave or words to that effect.